

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VII/8k  
on compliance by Kazakhstan with its  
obligations under the Convention**

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## **I. Introduction**

1. At its seventh session (Geneva, Switzerland, 18-21 October 2021), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VII/8k on compliance by Kazakhstan with its obligations under the Convention (see ECE/MP.PP/2021/2/Add.1).

## **II. Summary of follow-up**

2. At its seventy-third meeting (Geneva, 13-16 December 2021), the Committee held an open session to provide guidance on preparing the plan of action that each Party subject to a decision or request of the Meeting of the Parties was requested to submit by 1 July 2022. Though invited, the Party concerned did not take part in the open session.

3. On 8 February 2022, on the Committee's instructions, the secretariat sent an information note and a template to the Party concerned to assist it to prepare its plan of action.

4. At its seventy-fourth meeting (Geneva, 15-16 March 2022), the Committee held a further open session on the preparation of Parties' plans of action. The purpose of the session was to answer any specific questions from Parties regarding the format or content of their plan of action. Representatives of the Party concerned took part in the open session.

5. On 14 July 2022, the Party concerned submitted its plan of action on decision VII/8k.

6. On 20 July 2022, the secretariat forwarded the Party concerned's plan of action to the communicants of communications ACCC/C/2004/6, ACCC/C/2011/59 and ACCC/C/2013/88 and the observer, Asset Aseke, inviting their comments by 17 August 2022. No comments were received by the deadline.

7. On 3 December 2022, the secretariat wrote to the Party concerned to inform it that, having reviewed its plan of action, the Committee had concluded that Kazakhstan's plan of action appeared to be only partially appropriate. The Committee therefore invited the Party concerned to attend an open session at its seventy-seventh meeting (Geneva, 13-16 December 2022), to discuss its plan of action.

8. On 9 December 2022, the secretariat wrote to the Party concerned, providing it with a summary of the Committee's concerns on its plan of action.

9. At its seventy-seventh meeting, the Committee held an open session to discuss the Party concerned's plan of action with the participation of the Party concerned and observers.

10. On 29 September 2023, the Party concerned submitted its first progress report on decision VII/8k, on time.

11. On 16 October 2023, the secretariat forwarded the Party concerned's first progress report to the communicants of communications ACCC/C/2004/6, ACCC/C/2011/59 and ACCC/C/2013/88 and the registered observer, inviting their comments by 13 November 2023. No comments were received.

12. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 30 September 2024. The Committee thereafter requested the secretariat to forward its first progress review to the Party concerned, the communicants of communications ACCC/C/2004/6, ACCC/C/2011/59 and ACCC/C/2013/88, and the registered observer.

## **III. Considerations and evaluation by the Committee**

13. In order to fulfil the requirements of paragraph 2 of decision VII/8k, Kazakhstan will need to provide the Committee with evidence that it has, as a matter of urgency, taken the necessary legislative, regulatory, and administrative measures and practical arrangements to:

- (a) Ensure that the mandatory requirements of the content of the public notice, as prescribed by article 6 (2) of the Convention, are detailed in law;
- (b) Ensure that time frames set for decision-making procedures subject to articles 6 or 7 of the Convention are sufficient to enable the public to prepare and to participate effectively, and that:
  - (i) To the extent possible, they do not overlap with holiday periods and other nonworking days;
  - (ii) The volume and the complexity of the project or plan, programme or policy is considered when setting the relevant time frames;
- (c) Establish a clear and consistent requirement for all information relevant to the decision-making to be made accessible to the public, in accordance with article 6 (6) of the Convention;
- (d) Ensure that, in accordance with article 6 (7) of the Convention, the submission of comments by the public is not limited to only reasoned or “reasonable” comments;
- (e) Establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public of the environmental *expertiza* conclusions, and to facilitate public access to these decisions, in accordance with article 6 (9) of the Convention;
- (f) Maintain and make accessible to the public, through publicly available lists or registers, copies of decisions within the scope of article 6 once taken and other information relevant to the decision-making;
- (g) Ensure that appropriate practical and/or other provisions are made for the public to participate during the preparation of plans within the scope of article 7 of the Convention, including clear requirements to ensure that:
  - (i) The necessary information is provided to the public;
  - (ii) The public that may participate is identified by the relevant public authority;
  - (iii) The requirements of article 6 (3), (4) and (8) of the Convention are applied.

### **General observations**

#### *Engagement in Committee’s follow-up on decision VII/8k*

14. The Committee welcomes the Party concerned’s first progress report and the general level of engagement that the Party concerned has demonstrated in the preparation of its plan of action. The Committee particularly welcomes the format of the first progress report, in the form of a table, which is very clear and easy to follow.

15. The Committee also welcomes the adoption of the revised version of the Rules for Conducting Public Hearings dated 3 August 2021, No. 286 (the Rules for Public Hearings), which the Party concerned has provided together with its first progress report.

16. The Committee appreciates the English translations of the Environmental Code and Rules for Public Hearings provided by the Party concerned with its first progress report. The Committee however expresses its great disappointment that the English translation of the Environmental Code provided to the Committee was in fact an outdated version, and did not include recent amendments to the Code, including those adopted on 5 July 2023, which amended several of the Code’s public participation requirements.

17. The Committee also expresses its disappointment that, for a number of the recommendations in decision VII/8k, the Party concerned omits to mention the provisions of its legal framework, including its Environmental Code, which are in fact directly relevant to

the recommendation at issue, or it refers to legislative provisions which are not relevant to fulfil the particular recommendation.

18. The above issues have seriously hampered and significantly delayed the Committee in its task to review the progress by the Party concerned to implement decision VII/8k. They have resulted in a situation wherein the Committee has had to itself search the Environmental Code and the Rules for Public Hearings to identify the relevant provisions in order to be able to assess whether the Party concerned has in fact taken measures to address each recommendation in decision VII/8k.

**Paragraph 2 (a) – Mandatory requirements of the public notice**

19. In order to fulfil paragraph 2 (a) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Ensure that the mandatory requirements of the content of the public notice, as prescribed by article 6 (2) of the Convention, are detailed in law.

20. With respect to paragraph 2 (a), the Party concerned in its first progress report refers to article 73 (4) of the Environmental Code which provides that:

The announcement of public hearings must contain the following information:

- (1) The subject of public hearings;
- (2) The place, date and time of the start of public hearings;
- (3) A link to the page of the Internet resource of the authorized body in the field of environmental protection, where the draft report on possible impacts, a copy of the application on the planned activity are available;
- (4) Details and contact details of the initiator of the planned activity;
- (5) Email address and phone number to get additional information about the planned activity, holding public hearings, as well as request copies of documents related to the planned activity;
- (6) Email address and postal address of the authorized body in the field of environmental protection or its structural subdivisions, to which the public concerned can send their comments and suggestions to the draft report on possible impacts in written or electronic form.<sup>1</sup>

21. In its first progress report, the Party concerned also refers to Appendix 1 of the Rules for Public Hearings. Appendix 1 of the Rules provides that:

The announcement of public hearings contains the following information:

- (1) Name of the project;
- (2) A list of administrative-territorial units, the territory of which may be affected and on whose territory public hearings will be held (if public hearings on the same subject of hearings are held in more than one administrative-territorial unit);
- (3) Place, date and time of the start of public hearings. The period for holding an open meeting may be extended to five consecutive working days by decision of the participants in the public hearing;
- (4) Details and contact information of the initiator of the planned activity;
- (5) Details and contact information of the compilers of reports on possible impacts, or external experts involved in the preparation of reports on strategic environmental assessment, or developers of documentation of state environmental assessment objects, efficiency improvement programs, environmental action plans;

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<sup>1</sup> Party concerned's first progress report, 29 September 2023, annex 2, pp. 65-66.

(6) A link to the Unified Environmental Portal and the official Internet resource of the local executive body of the relevant administrative-territorial unit (regions, cities of republican significance, the capital), where it is possible to familiarize with the materials submitted to public hearings, and then with the published protocol of public hearings;

(7) Email address and telephone number(s) where it is possible to obtain additional information about the planned activity, public hearings, and also request copies of documents related to the planned activity;

(8) Email address and postal address of the authorized body in the field of environmental protection or local executive body of regions, cities of republican significance, the capital, to which the public and interested public can send their comments and suggestions in paper or electronic form on documents submitted to public hearings and according to the published protocol of public hearings;

(9) A confirming document on the timely placement of an announcement about public hearings in a periodical printed publication (newspaper);

(10) Confirming document on the timely placement of an announcement about holding public hearings in at least one television or radio channel;

(11) Photographs of announcements of public hearings through open meetings, posted in places accessible to the public, with a corner electronic stamp of the time taken.<sup>2</sup>

22. While welcoming Appendix I of the Rules for Public Hearings, the Committee notes that a number of the notice requirements set out in article 6 (2) of the Convention still appear to be missing from the above-mentioned provisions, namely:

(a) The application on which a decision will be taken (article 6 (2) (a));

(b) The nature of possible decisions or the draft decision (article 6 (2) (b));

(c) The public authority responsible for making the decision (article 6 (2) (c))

(d) The opportunities for the public to participate (article 6 (2) (d) (ii));

(e) An indication of the time schedule for transmittal of comments or questions (article 6 (2) (d) (v));

(f) An indication of what environmental information relevant to the purposed activity is available (article 6 (2) (d) (vi))

(g) The fact that the activity is subject to national or transboundary environmental impact assessment procedure (article 6 (2) (e)).

23. The Committee expresses its disappointment that, despite the Committee having made clear in its report on decision VI/8g to the seventh session of the Meeting of the Parties that the mandatory requirements for public notice listed in paragraph 22 (a)–(g) above were missing from the Party concerned's legal framework,<sup>3</sup> the Party concerned failed to address these omissions in its most recent revision of the Rules for Public Hearings. The Committee therefore urges the Party concerned to amend its legal framework to include each of the mandatory public notice requirements listed in paragraph 22 (a)–(g) above and to provide the text of its amended legislation, including an English translation thereof, together with its final progress report.

24. Accordingly, the Committee concludes that the Party concerned has not yet fulfilled paragraph 2 (a) of decision VII/8k.

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<sup>2</sup> Party concerned's first progress report, 29 September 2023, annex 1, p. 11.

<sup>3</sup> ECE/MP.PP/2021/53, paras. 45 and 46.

## **Paragraph 2 (b) – Time frames for decision-making subject to articles 6 and 7**

25. In order to fulfil paragraph 2 (b) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Ensure that time frames set for decision-making procedures subject to articles 6 or 7 of the Convention are sufficient to enable the public to prepare and to participate effectively, and that:

(i) To the extent possible, they do not overlap with holiday periods and other nonworking days;

(ii) The volume and the complexity of the project or plan, programme or policy is considered when setting the relevant time frames.

26. The Committee examines the information before it with respect to time frames for the public to participate in decision-making procedures subject to article 6 and 7 of the Convention below.

### *Decision-making procedures subject to article 6*

#### Activities subject to environmental impact assessment

27. The Committee understands that, under the Party concerned's legal framework, the public has at least three opportunities to participate in decision-making on proposed activities subject to environmental impact assessment (EIA).

28. First, pursuant to article 68 (9) of the Environmental Code, the public has fifteen working days to submit written comments on the application for the proposed activity.

29. Second, pursuant to article 73 (1) of the Environmental Code and paragraph 6 (1) of the Rules for Public Hearings, once the EIA report has been finalized, the public has the opportunity to participate in a public hearing in the form of an opening meeting.

30. Third, pursuant to article 73 (3), (4) and (7) of the Environmental Code and paragraphs 15, 17 and 18 of the Rules for Public Hearings, the public has the opportunity to send written comments from the date of the public notice, which must be at least twenty working days before the public hearing, through until three working days before the public hearing. Specifically:

(a) Article 73 (3) of the Code and paragraph 15 of the Rules provide that the documents submitted for public hearings are posted for inspection on the Portal and on other online sources "no less than thirty calendar days before the date of the public hearings".

(b) Article 73 (4) of the Code and paragraph 17 of the Rules provide that the date for public hearings must be set "no earlier than twenty working days from the date of publication of the announcement of public hearings in the media."

(c) Article 73 (7) and paragraph 18 of the Rules stipulate that the public may "send to the subordinate organizations of the authorized body in the field of environmental protection their comments and suggestions in writing (on paper or electronic media) to documents submitted to public hearings no later than three working days before the start date of public hearings."<sup>4</sup>

31. The Committee considers that the cumulative time period of fifteen working days under article 68 (9) of the Environmental Code and seventeen working days (minimum) under paragraph 17 and 18 of the Rules on Public Hearings is sufficient to enable the public to prepare and to participate effectively in decision-making under article 6, bearing in mind that the seventeen working day timeframe is also a minimum timeframe that could potentially be increased bearing in mind the complexity of the project.

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<sup>4</sup> Party concerned's first progress report, 29 September 2023, annexes 1 and 2.

32. Given the above, and subject to receiving any information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (b) of decision VII/8k with respect to decision-making on proposed activities subject to article 6 of the Convention that are subject to EIA.

Activities subject to article 6 of the Convention that are not subject to EIA

33. The Committee notes that section 1 of Appendix 1 of the Environmental Code lists many of the activities in Annex I of the Convention, whilst others are contained in section 2 of Appendix 1 of the Environmental Code. The activities in section 1 of Appendix 1 are subject to mandatory EIA. In turn, the activities in section 2 of Appendix 1 are subject to EIA screening under article 69 of the Environmental Code.

34. For those activities which are determined through screening to require an EIA, the considerations in paragraphs 27-32 above apply.

35. The situation is however different for activities listed in section 2 of Appendix 1 of the Environmental Code and Annex I of the Convention that are determined through screening not to require an EIA. It appears to the Committee that, for such activities, there is no further opportunity for the public to participate beyond the fifteen working day period for written comments under article 68 (9) of the Environmental Code.

36. The Committee does not consider a fifteen working day period to be sufficient to enable the public to prepare and to participate effectively in decision-making on proposed activities under article 6 of the Convention.

37. The Committee therefore concludes that, with respect to decision-making on proposed activities listed in Annex I of the Convention which are determined through screening not to require an EIA, the Party concerned has not yet met the requirements of paragraph 2 (b) of decision VII/8k.

38. The Committee calls on the Party concerned to take the necessary measures to ensure that it fulfils the requirements of paragraph 2 (b) of decision VII/8k for all activities listed in Annex I of the Convention not currently listed in section 1 of Appendix 1 of the Environmental Code, and not only those which are subject to EIA under the Party concerned's legal framework. One solution would be for the Party concerned to amend Appendix 1 of the Environmental Code to move all activities listed in Annex I of the Convention that are currently in section 2 of Appendix 1 into section 1 of Appendix 1 of the Environmental Code. Another possibility might be for the Party concerned to ensure that its instructions for organizing and conducting an environmental assessment ("instructions on environmental assessment") explicitly require that all activities in section 2 of Appendix 1 of the Environmental Code that are listed in Annex I of the Convention are to be screened positively for EIA.

*Decision-making procedures subject to article 7*

Plans and programmes subject to strategic environmental assessment

39. Article 52 (3) of the Environmental Code specifies the types of plans and programmes subject to strategic environmental assessment (SEA). Article 52 (4) of the Environmental Code stipulates the types of plans and programmes subject to screening for SEA.

40. Article 60 (3) of the Environmental Code requires that "[t]he state body – developer ensures the participation of the interested public in the strategic environmental assessment by...establishing reasonable timeframes that provide the interested public with the opportunity to make comments and suggestions in a timely manner and with due effectiveness at all stages of the strategic environmental assessment."

41. Pursuant to article 57 (8) of the Environmental Code, "[t]he authorized body in the field of environmental protection shall accept comments and suggestions from interested government agencies and the public within thirty calendar days from the date of posting the strategic environmental assessment report on the official Internet resource."



42. In accordance with article 58, once the state body-developer has recognized the SEA report as satisfactory and revised the plan or programme to take into account the SEA report's conclusions, the draft plan or programme is submitted for a public hearing in accordance with the Rules for Public Hearings.

43. Pursuant to paragraph 6 (1) of the Rules for Public Hearings, the public hearing will be conducted in the form of an open meeting.

44. With respect to the time frames for public participation, the Committee notes that paragraphs 15, 17 and 18 of the Rules for Public Hearings (see para. 30 above), likewise apply to plans and programmes subject to SEA. Pursuant to paragraphs 15, 17 and 18 of the Rules, the documents submitted for public hearings must be posted for inspection on the Portal and on other online sources "no less than thirty calendar days before the date of the public hearings" and the public has the opportunity to send written comments from the date of the public notice, which must be "at least twenty working days before the public hearing", through until "three working days before the public hearing".

45. The Committee notes that the public also has the opportunity to submit comments during the public hearing itself.

46. The Committee considers that the cumulative timeframes of the opportunity for the public to submit written comments under article 57 (8) of the Environmental Code and paragraphs 15, 17 and 18 of the Rules for Public Hearings, as well as to submit comments at the hearing itself, meets the requirement of paragraph 2 (b) of decision VII/8k to ensure time frames that are sufficient to enable the public to prepare and to participate effectively with respect to plans and programmes subject to SEA.

47. Accordingly, subject to receiving any information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (b) of decision VII/8k with respect to plans and programmes subject to SEA.

Plans and programmes not subject to SEA that are subject to a public hearing in the form of an open meeting

48. Pursuant to paragraph 6 (3) of the Rules for Public Hearings, the development of "action plans for environmental protection by local executive bodies of regions, cities of republican significance, and the capital for a three-year perspective"<sup>5</sup> is subject to a public hearing in the form of an open meeting.

49. Based on the information before the Committee, these action plans for environmental protection are not subject to SEA.

50. With respect to the time frames for public participation, the Committee notes that paragraphs 15, 17 and 18 of the Rules for Public Hearings (see para. 44 above) apply to these action plans. The public also has the opportunity to submit comments during the public hearing itself.

51. The Committee considers that the cumulative timeframes of the opportunity for the public to submit written comments under paragraphs 15, 17 and 18 of the Rules for Public Hearings and to comment at the hearing itself meets the requirement of paragraph 2 (b) of decision VII/8k to ensure time frames that are sufficient to enable the public to prepare and to participate effectively with respect to three-year action plans for environmental protection.

52. Accordingly, based on the information before it and subject to receiving any information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (b) of decision VII/8k with respect to three-year action plans for environmental protection within the scope of paragraph 6 (3) of the Rules for Public Hearings.

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<sup>5</sup> Party concerned's first progress report, 29 September 2023, annex 1, p. 6.



Plans and programmes not subject to SEA that are subject to a public hearing in the form of an online discussion

53. Pursuant to paragraph 39 (3) of the Rules for Public Hearings, “draft programmes for improving environmental efficiency” are subject to a public hearing in the form of an online discussion.

54. Pursuant to paragraph 42 (2) of the Rules for Public Hearings, the draft programme for environmental efficiency will be available online for comments and suggestions from the public during twenty working days.

55. The Committee considers that a timeframe of twenty working days for the public to submit comments and suggestions should be sufficient to enable the public to prepare and to participate effectively with respect to the draft environmental efficiency programme.

56. Accordingly, based on the information before the Committee and subject to receiving any information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (b) of decision VII/8k with respect to environmental efficiency programmes within the scope of paragraph 39 (3) of the Rules for Public Hearings.

Other plans and programmes relating to the environment

57. As noted in paragraphs 39, 48 and 53 above, the Environmental Code and the Rules for Public Hearings provide for public participation during the preparation of various types of plans and programmes “relating to the environment” within the scope of article 7, including those subject to mandatory SEA (article 52 (3) of the Environmental Code); those determined through screening to require SEA (article 52 (4) of the Environmental Code); draft environmental protection action plans (paragraph 6 (3) of the Rules); and programmes for environmental efficiency (paragraph 39 (3) of the Rules).

58. The Committee recalls its findings on communication ACCC/C/2013/88 (Kazakhstan), in which it held that plans and programmes “relating to the environment”, and therefore within the scope of article 7, include: “(a) those that may have a significant effect on the environment and require strategic environmental assessment; (b) those that may have a significant effect on the environment but do not require strategic environmental assessment; (c) those that may have an effect on the environment but the effect would not be significant; and (d) those intended to help protect the environment.”<sup>6</sup>

59. In the light of the above findings, the Committee is not convinced that the plans and programmes referred to in paragraph 57 above represent the full scope of plans and programmes “relating to the environment” prepared by public authorities in the Party concerned, and therefore within the scope of article 7 of the Convention.

60. The Committee makes it clear that, to fully meet the recommendation in paragraph 2 (b) of decision VII/8k, the Party concerned will need to demonstrate to the Committee in its final progress report that it ensures a sufficient timeframe to enable the public to prepare and to participate effectively in all plans and programmes “relating to the environment” prepared by public authorities in the Party concerned.

61. The Party concerned has not however pointed the Committee to any provisions of its legal framework that require public participation meeting the requirements of article 7 of the Convention to be carried out for plans and programmes relating to the environment that are not either subject to SEA or within the scope of paragraphs 6 (3) or 39 (3) of the Rules for Public Hearings.

62. Accordingly, the Committee concludes that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 2 (b) of decision VII/8k with respect to plans and programmes “relating to the environment” within the scope of article 7 of the Convention that are not either subject to SEA or covered by paragraphs 6 (3) or 39 (3) of the Rules for Public Hearings.

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<sup>6</sup> ECE/MP.PP/C.1/2017/12, para. 128.

## **Paragraph 2 (c) – Access to all information relevant to the decision-making procedure**

63. In order to fulfil paragraph 2 (c) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Establish a clear and consistent requirement for all information relevant to the decision-making to be made accessible to the public, in accordance with article 6 (6) of the Convention.

64. With respect to paragraph 2 (c), the Party concerned in its first progress report refers to articles 52 (3), 73 (2) and (9) of the Environmental Code and paragraphs 3 and 15 of the Rules for Public Hearings.<sup>7</sup>

65. Having reviewed the various provisions cited by the Party concerned, the Committee considers that none of them establish a clear and consistent requirement that “all information relevant to the decision-making” be made accessible to the public concerned in accordance with article 6 (6) of the Convention.

66. Of the various provisions cited by the Party concerned (see para.64 64 above), paragraph 15 of the Rules on Public Hearings would appear partially to fulfil the recommendation in paragraph 2 (c) of decision VII/8k in the case of proposed activities subject to EIA.

67. Pursuant to paragraphs 12 (2) and 15 of the Rules, the draft EIA report must be posted on the Unified Environmental Portal and on the websites of local executive bodies of the relevant administrative territorial units for at least thirty calendar days from the date of its placement.

68. Paragraph 17 of the Rules for Public Hearings requires that the draft EIA report must be accessible on the Unified Environmental Portal and on the websites of local executive bodies of the relevant administrative territorial units for at least twenty working days before the public hearing on the draft EIA report.

69. While welcoming the above, the Committee considers that paragraph 12 (2), 15 and 17 of the Rules fall short of fulfilling the requirements of paragraph 2 (c) of decision VII/8k in several respects, as explained in paragraphs 70-81 below.

### *Access to all information provided to the decision-maker, not just to the draft EIA report*

70. Article 6 (6) of the Convention requires competent public authorities to give the public concerned access for examination to “all information relevant to the decision-making...that is available at the time of the public participation procedure”. This means that (except for information exempted from public disclosure under article 4 (3) and (4) of the Convention), the public concerned must be given access to the same information as the decision-maker has access to. As the Committee held in its findings on communications ACCC/C/2004/3 (Ukraine) and ACCC/C/2010/15 (Romania), article 6 (6) “is certainly not limited to a requirement to publish an environmental impact statement”. Rather, as the Committee made clear in its findings on communication ACCC/C/2012/71 (Czechia), “if the public authorities were in fact provided with any further information relevant to the decision-making than that made available to the public concerned (excepting information exempted from public disclosure in accordance with article 4, paragraphs 3 and 4), that would amount to non-compliance with article 6, paragraph 6.”

71. The Committee points out that the requirement in article 6 (6) that the public concerned has access to “all information relevant to the decision-making” is a necessary precondition for the fulfilment of the requirement in article 6 (7) that “procedures for public participation shall allow the public to submit...any comments, information, analyses or opinions that it considers relevant to the proposed activity.” Article 6 (7) requires that the public is able to submit any comments that it considers relevant to the “proposed activity”. This is not limited only to comments on the draft EIA report.

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<sup>7</sup> Party concerned’s first progress report, 29 September 2023, pp. 6-7.

72. The Committee highlights some examples of other information relevant to the decision-making held by the competent public authority in paragraphs 73-80 below.

(i) The “application for the proposed activity” should be accessible to the public concerned until the decision on the proposed activity is taken

73. While not referred to by the Party concerned in its first progress report, the Committee considers that article 68 (5) – (7) of the Environmental Code is also of relevance to the recommendation in paragraph 2 (c) of decision VII/8k. Article 68 (5) – (7) provides that:

5. Within two working days after receiving an application for the planned activity, the authorized body in the field of environmental protection checks it for the presence of the information specified in paragraph 2 of this article, and:

...

2) if the initiator [developer] submits an application on the planned activity containing all the necessary information in accordance with paragraph 2 of this article, places the application on the planned activity on the official Internet resource and sends a copy of it to the relevant interested state bodies.

6. Local executive bodies of the relevant administrative-territorial units, within two working days after receiving from the authorized body in the field of environmental protection, of a copy of the application for planned activities, place it on official Internet resources.

7. The application for planned activities should be available on the Internet resources of the authorized body in the field of environmental protection and local executive bodies of the relevant administrative-territorial units within thirty consecutive calendar days from the date of placement.

74. The Committee welcomes that article 68 (5) and (6) of the Environmental Code appear to require the full application file for the proposed activity as submitted by the developer to be posted on the website of the relevant public authorities promptly after its receipt.

75. The Committee however regrets that, pursuant to article 68 (7), the application for the proposed activity is only available for thirty consecutive days from the date of its placement on the relevant public authorities’ official websites. Since the thirty working day time period for the issuance of the conclusion of the EIA scoping procedure under article 71 of the Environmental Code only begins to count from the date of the application’s placement on public authorities’ websites, the thirty calendar day time period for the application to be available on the relevant public authorities’ websites will have expired by the time the scoping conclusion is issued, long before the commencement of the time frame for the public to submit comments on the draft EIA report itself.

76. The Committee therefore invites the Party concerned to take the necessary measures to ensure that the application for the proposed activity is required to remain accessible to the public concerned until the decision on the proposed activity is taken. The Committee invites the Party concerned to provide the text of those measures, including an English translation thereof, together with its final progress report.

77. As explained in paragraphs 78-80 below, however, ensuring the accessibility of the application for the proposed activity until the decision on the proposed activity is taken will not in itself be sufficient to meet the requirements of paragraph 2 (c) of decision VII/8k.

(ii) Access “as soon as it becomes available” to any other information relevant to the decision-making

78. Article 6 (6) of the Convention requires “the competent public authorities to give the public concerned access for examination...as soon as it becomes available, to all information relevant to the decision-making...that is available at the time of the public participation procedure”. This means that the requirement to give the public concerned access to the information relevant to the decision-making is an ongoing obligation throughout the public

participation procedure. If additional reports or documents come into the possession of the competent authority after the application for the proposed activity is posted on the official Internet resource, these must be promptly made available to the public concerned also.

79. For example, for proposed activities subject to EIA, article 71 (2) of the Environmental Code requires the authorized body in the field of environmental protection to issue a conclusion determining the scope of the EIA within thirty working days from the date the application for the proposed activity is placed on its official website. The conclusion determining the scope of the EIA (“scoping determination”) is clearly information in the possession of the competent authority that is relevant to its decision-making on the proposed activity. The scoping determination should therefore be made accessible to the public concerned as soon as it is issued and should remain accessible until the decision on the proposed activity is taken.

80. The Committee invites the Party concerned to take the necessary measures to ensure that the public concerned is provided with access to all information relevant to the decision-making as soon as it becomes available, including the application for the proposed activity, the scoping determination and any other reports or documents that come into the possession of competent authority prior to the decision on the proposed activity being taken. The Committee invites the Party concerned to provide the text of the measures it has taken to address the considerations in paragraphs 78-79 above, including an English translation thereof, together with its final progress report.

*Access for examination in person, not just online*

81. The Committee welcomes that all documents submitted for public hearings are posted on the Unified Environmental Portal and on the websites of local executive bodies of the relevant administrative territorial units.

82. The Committee also welcomes that article 68 (5) and (6) of the Environmental Code require that the application for the proposed activity is posted, within two working days of receipt, on the official Internet resources of the “authorized body in the field of environmental protection” and, within two days thereafter, of the local executive bodies of the relevant administrative territorial units.

83. The Committee does not however consider that the availability of information exclusively online satisfies the requirement in article 6 (6) of the Convention to provide access for examination to all the relevant information. In this regard, the Committee refers with approval to the *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters*, which state that “all the information relevant to the decision-making ... should at a minimum be accessible for examination [a]t the seat of the competent public authority, as well as the relevant branch location(s)”<sup>8</sup>.

84. The Committee therefore invites the Party concerned to take the necessary measures to ensure that, in addition to being publicly accessible online, all information relevant to the decision-making is accessible for examination by the public concerned in person at the offices of the relevant public authorities.

85. The Committee invites the Party concerned to provide the text of the measures it has taken to address the considerations in paragraphs 83-84 above, including an English translation thereof, together with its final progress report.

*Concluding remarks regarding paragraph 2 (c)*

86. In the light of the considerations in paragraphs 69-85 above, while welcoming the progress made, the Committee concludes that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 2 (c) of decision VII/8k. The Committee invites the Party concerned to take the necessary measures to address the considerations in

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<sup>8</sup> Maastricht Recommendations on Promoting Effective Public Participation in Environmental Matters (United Nations publication, 2015), para. 92.

paragraphs 70-84 above and to provide the text of those measures, together with an English translation thereof, to the Committee together with its final progress report.

**Paragraph 2 (d) – Comments by the public not limited to those that are “reasoned” or “reasonable”**

87. In order to fulfil paragraph 2 (d) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Ensure that, in accordance with article 6 (7) of the Convention, the submission of comments by the public is not limited to only reasoned or “reasonable” comments.

88. With respect to paragraph 2 (d), the Party concerned in its first progress report refers to paragraphs 18 and 19 of the Rules for Public Hearings. Paragraphs 18 and 19 provide, respectively, that the public sends its comments and suggestions on the documents submitted to public hearings no later than three working days before the start of the hearings, and that the comments and suggestions received are posted on the Unified Environmental Portal and sent to the local executive bodies of the relevant administrative-territorial units for posting on their official Internet resource.<sup>9</sup>

89. Although not mentioned by the Party concerned in its first progress report, the Committee recalls that, in its report on decision VI/8g to the Meeting of the Parties, the Committee had highlighted that article 73 (8) of the Environmental Code is also relevant to the recommendation in paragraph 2 (d) of decision VII/8k. Article 73 (8) provides that:

When conducting public hearings, comments and suggestions of the interested state bodies and the public that are not formulated specifically and do not reflect the essence of the comments and suggestions or are clearly not related to the issues to be studied as part of the environmental impact assessment are not taken into account.<sup>10</sup>

90. In its report on decision VI/8g to the Meeting of the Parties, the Committee held:

62. The Committee ... regrets that the Party concerned has not yet demonstrated that it has addressed the concerns expressed by the Committee in its second progress review with respect to proposed article 84 (8) of the then-draft Environmental Code, which corresponds to article 73 (8) of the new Environmental Code. This provision stipulates that comments which are “not specifically formulated and do not reflect the substance of the comments and suggestions or are clearly irrelevant to the issues to be studied in the environmental impact assessment” are not taken into account.

63. The Committee reiterates its concern that this provision may effectively require in practice that, “in order to be taken into account, comments will need to be reasonable and reasoned”. If this were the case, this would not be compatible with the Convention which requires that every comment, even if brief or general, that does no more than express support for or opposition to an activity must still be taken into account. The competent authority may however deal with any comments clearly not related to the issues studied in the assessment in a summary manner, provided that this is done in a transparent and traceable way.

64. The Committee regrets that the Party concerned has neither submitted examples of comments which could be considered as “not specifically formulated, and do not reflect the substance of the comments and suggestions”, nor clarified how a restriction in taking these comments into account could be compatible with article 6 (8) of the Convention, as specifically requested by the Committee in its second progress review.<sup>11</sup>

91. In the light of the above paragraphs of its report to the Meeting of the Parties on decision VI/8g, the Committee is disappointed to see that the wording of article 73 (8) of the

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<sup>9</sup> Party concerned’s first progress report, 29 September 2023, p. 7 and annex 1, p. 6.

<sup>10</sup> Party concerned’s first progress report, 29 September 2023, annex 2, p. 66.

<sup>11</sup> ECE/MP.PP/2021/53, paras. 62-64.

Environmental Code appears to be unchanged from the text of that provision examined by the Committee in that report. The Committee therefore reaffirms the concerns it expressed in paragraph 63 of its report to the Meeting of the Parties on decision VI/8g and calls on the Party concerned to amend article 73 (8) as soon as possible.

92. The Committee notes that paragraph 25 and 45 of the Rules for Public Hearings take a similar approach to that in article 73 (8) of the Environmental Code. Paragraph 25 of the Rules stipulates that:

When holding public hearings, comments and suggestions from interested government bodies and the public that are not specifically formulated and do not reflect the essence of the comments and suggestions or are clearly not related to the subject of the public hearing are not taken into account, based on the results of voting by a simple majority of all participants in the hearing.<sup>12</sup>

93. With respect to public discussions conducted through the Unified Environmental Portal, paragraph 45 of the Rules for Public Hearings states that “comments and proposals which are not related to the projects under discussion, ... will not be accepted”.<sup>13</sup>

94. The Committee considers that the concerns it expressed in paragraph 63 of its report on decision VI/8g (see para. 90 above) are equally applicable to paragraphs 25 and 45 of the Rules for Public Hearings. The Committee makes clear that every comment, even if brief or general and that does no more than express support for, or opposition to, an activity must still be taken into account. The competent authority may however deal with any comments clearly not related to the issues studied in the assessment in a summary manner, provided that this is done in a transparent and traceable way.

95. The Committee expresses its disappointment that the Party concerned has not yet addressed its concerns with respect to article 73 (8) of the Environmental Code and that, despite the Committee having explained its concerns, the Party concerned has adopted a revised version of its Rules on Public Hearings, without taking the Committee’s recommendations into account.

96. The Committee urges the Party concerned to amend article 73 (8) of the Environmental Code and paragraphs 25 and 45 of the Rules for Public Hearings to ensure that every comment, even if brief or general and merely expressing support for, or opposition to, an activity, must still be taken into account.

97. In light of the considerations in paragraphs 89-96 above, the Committee concludes that the Party concerned has not yet fulfilled the requirements of paragraph 2 (d) of decision VII/8k. The Committee invites the Party concerned, together with its final progress report, to provide the amended text of article 73 (8) of the Environmental Code and paragraphs 25 and 45 of the Rules for Public Hearings, together with an English translation thereof.

#### **Paragraph 2 (e) – Prompt notification of decisions once taken**

98. In order to fulfil paragraph 2 (e) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public of the environmental *expertiza* conclusions, and to facilitate public access to these decisions, in accordance with article 6 (9) of the Convention.

99. The Committee notes that the recommendation in paragraph 2 (e) of decision VII/8k stems from the Committee’s findings on communication ACCC/C/2011/59, which were adopted in 2013.<sup>14</sup> At the time of those findings, the final decision in procedures subject to

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<sup>12</sup> Party concerned’s first progress report, 29 September 2023, annex 1, p. 7.

<sup>13</sup> Party concerned’s first progress report, 29 September 2023, annex 1, p. 10.

<sup>14</sup> ECE/MP.PP/C.1/2013/9, para. 64.



article 6 of the Convention in the Party concerned was the environmental *expertiza* conclusion.

100. The Committee understands that, following the adoption of the Environmental Code in January 2021, the final decision in decision-making procedures subject to article 6 of the Convention in the Party concerned is now the environmental permit, and not the environmental *expertiza* conclusion.

101. Given this important change, in its follow-up on paragraph 2 (e) of decision VII/8k, the Committee examines the procedures established by the Party concerned to notify the public about environmental permits, once issued, promptly and to facilitate the public's access to such permits.

*Facilitating the public's access to environmental permits once issued*

102. The Committee notes that article 25 (7) (23) of the Environmental Code requires issued environmental permits to be uploaded in the State Environmental Information Fund.

103. The Committee considers that the requirement in article 25 (7) (23) that environmental permits be uploaded in the State Environmental Information Fund may fulfil the recommendation in paragraph 2 (e) of decision VII/8k in part, namely with respect to the requirement "to facilitate public access to these decisions, in accordance with article 6 (9) of the Convention".

104. Accordingly, subject to receiving any information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has fulfilled the recommendation in paragraph 2 (e) of decision VII/8k with respect to facilitating the public's access to environmental permits, once issued.

*Appropriate procedures, not limited to publishing decisions only on websites, to promptly notify the public of environmental permits once issued*

105. In order to satisfy the recommendation in paragraph 2 (e) in full, however, the Party concerned will also need to "establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public" of environmental permits, once issued.

106. Whilst not mentioned by the Party concerned in its first progress report, the Committee notes that article 15 (5) of the Environmental Code provides:

State bodies or officials who have made a decision on issues relating to the environment are obliged to immediately inform the public concerned about this by submitting to it, in the manner prescribed by this Code, the text of the decision, together with an indication of the reasons and arguments that formed the basis of this decision.

107. The Committee welcomes article 15 (5) but notes that it is not in itself sufficient to meet the recommendation in paragraph 2 (e) to "establish appropriate procedures ... to promptly notify the public" of environmental permits, once issued. First, paragraph 2 (e) of decision VII/8k requires "the public" to be promptly notified of environmental permits, and not only "the public concerned". Second, article 15 (5) requires State bodies or officials to inform the public concerned of decisions "in the manner prescribed by this Code". The Party concerned has not however pointed the Committee to any provision of the Code which stipulates how the public is to be notified of environmental permits, once issued.

108. Rather, the Party concerned in its first progress report states that, according to its Bureau of National Statistics, the Internet usage in Kazakhstan among the population aged 16-74 years is 89.2%. The Party concerned also states that the public can request copies of environmental permits from the State Environmental Information Fund, free of charge within one day.<sup>15</sup> The Party concerned submits that it considers it:

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<sup>15</sup> Party concerned's first progress report, 29 September 2023, p. 8.



inappropriate to establish special procedures, in addition to the website, aimed at promptly informing the public about the results of environmental expertise, since this jeopardizes the protection of the rights and legitimate interests of entrepreneurs and business development in general.<sup>16</sup>

109. The Committee makes it clear that even if 100% of the public in Kazakhstan had access to the Internet, uploading environmental permits on the Internet would still not be sufficient to meet the requirement of paragraph 2 (e) of decision VII/8k to “establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public” of environmental permits, once issued (emphasis added).

110. The Committee recalls its findings on communication ACCC/C/2013/99 (Spain) in which it held:<sup>17</sup>

In the view of the Committee, informing the public about the decision taken exclusively by means of the Internet does not meet the requirement of article 6, paragraph 9, of the Convention. ... [As] the Committee held in its findings on communication ACCC/C/2012/71 (Czechia), “it is not reasonable to expect members of the public to proactively check the Ministry’s website on a regular basis just in case at some point there is a decision-making procedure of concern to them.”<sup>18</sup> ... On this point, the Committee also recalls its finding on communication ACCC/C/2004/8 (Armenia) where it held that the mere fact that the public may be able to access a decision subject to article 6 through a publicly accessible electronic database does not satisfy the requirement of article 6, paragraph 9, if the public has not been promptly and effectively informed of that fact.<sup>19</sup>

111. For the same reason, the possibility for members of the public to request copies of environmental permits from the State Environmental Information Fund, free of charge and within one day, does not fulfil the requirement in paragraph 2 (e) of decision VII/8k to “establish appropriate procedures...to promptly notify the public” of environmental permits either. The fact that the public can access the environmental permit upon request cannot satisfy the requirement of article 6 (9) of the Convention if the public has not been promptly and effectively notified that the environmental permit has even been issued.

112. With respect to the means through which the public should be notified that the environmental permit has been issued, the Committee refers again to its findings on communication ACCC/C/2013/99 (Spain), in which it held:

The Committee considers that, as a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned.<sup>20</sup>

113. In this regard, the Committee notes that, pursuant to article 68 (8) of the Environmental Code, in addition to the placement of the public notice for an application for a proposed activity on the official Internet resources, the public notice is distributed in “one of the mass media, and also in other ways in accordance with the Law of the Republic of Kazakhstan ‘On access to information’”.<sup>21</sup>

114. Similarly, pursuant to article 73 (4) of the Environmental Code, the announcement of the public hearing on the EIA report is published in “at least one newspaper and through at least one television or radio channel distributed on the territory of the relevant administrative-territorial units”.<sup>22</sup>

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<sup>16</sup> Party concerned’s first progress report, 29 September 2023, p. 8.

<sup>17</sup> ECE/MP.PP/C.1/2017/17, para. 104.

<sup>18</sup> ECE/MP.PP/C.1/2017/3, para. 76.

<sup>19</sup> ECE/MP.PP/C.1/2006/2/Add.1, para. 31.

<sup>20</sup> ECE/MP.PP/C.1/2017/17, para. 103.

<sup>21</sup> Party concerned’s first progress report, 29 September 2023, annex 2.

<sup>22</sup> Party concerned’s first progress report, 29 September 2023, annex 2.

115. In the light of the considerations in paragraphs 105-114 above, the Committee concludes that the Party concerned has not yet demonstrated that it has met the requirement in paragraph 2 (e) of decision VII/8k to “establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public” of environmental permits once issued.

116. Recalling that article 15 (5) of the Environmental Code requires State bodies or officials to immediately inform the public concerned “in the manner prescribed by this Code” of the decisions they have taken, the Committee invites the Party concerned in its final progress report to provide the Committee with the text of the relevant provisions of its legal framework which require the competent public authority to promptly notify the public, through means which are not limited to publishing the decision only on websites, of environmental permits, once issued.

**Paragraph 2 (f) – Publicly accessible list or registers of decisions and other information relevant to the decision-making**

117. In order to fulfil paragraph 2 (f) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Maintain and make accessible to the public, through publicly available lists or registers, copies of decisions within the scope of article 6 once taken and other information relevant to the decision-making.

118. The Committee notes that paragraph 2 (f) has two components, namely the public’s access through publicly available lists or registers to: (a) “copies of decisions within the scope of article 6 once taken”; and (b) “other information relevant to the decision-making”. The Committee examines each of these below.

*Publicly available list or register of decisions within the scope of article 6*

119. As noted in paragraph 100 above, the Committee understands that, following the adoption of the Environmental Code in January 2021, the final decision in decision-making procedures subject to article 6 of the Convention is now the environmental permit.

120. As noted in paragraph 102 above, article 25 (7) (23) of the Environmental Code requires issued environmental permits to be uploaded in the State Environmental Information Fund.

121. In its first progress report, the Party concerned states that information stored in the State Environmental Information Fund is accessible to the public upon request, within a one-day period, free of charge.

122. The Committee considers that the uploading of issued environmental permits to the State Environmental Information Fund, coupled with their availability free of charge within one day upon request, is sufficient to fulfil the requirement in paragraph 2 (f) of decision VII/8k to maintain a publicly available list or register of copies of decisions within the scope of article 6, once taken.

*Publicly available list or register of other information relevant to decision-making within the scope of article 6*

123. With respect to paragraph 2 (f), the Party concerned in its first progress report refers to paragraphs 13, 30, 39 and 48 of the Rules for Public Hearings pursuant to which documentation related to the public hearing is required to be posted, within two working days, on the Unified Environmental Portal and sent to local executive bodies of the respective administrative-territorial units for posting on their official Internet resources.<sup>23</sup>

124. Having reviewed paragraphs 13, 30, 39 and 48 of the Rules, and subject to receiving any information to the contrary in the meantime, the Committee considers that, taken together, these provisions may be sufficient to fulfil the requirement in paragraph 2 (f) of

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<sup>23</sup> Party concerned’s first progress report, 29 September 2023, p. 9.

decision VII/8k to maintain publicly available registers of “other information relevant to the decision-making”.

*Concluding remarks on paragraph 2 (f)*

125. Based on the considerations in paragraphs 118-124 above, and subject to receiving any information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (f) of decision VII/8k.

**Paragraph 2 (g) (i) – Provision of the “necessary information” to the public during the preparation of plans and programmes within the scope of article 7**

126. In order to fulfil paragraph 2 (g) (i) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Ensure that appropriate practical and/or other provisions are made for the public to participate during the preparation of plans within the scope of article 7 of the Convention, including clear requirements to ensure that:

(i) The necessary information is provided to the public.

127. In line with paragraph 60 above, the Party concerned will need to ensure that the recommendation in paragraph 2 (g) (i) is fulfilled with respect to all plans and programmes relating to the environment in the Party concerned, including those subject to SEA and those that are not.

128. As to what is the “necessary information” to provide to the public during the preparation of plans and programmes within the scope of article 7 of the Convention, as highlighted in its report on decision VI/8g to the seventh session of the Meeting of the Parties, the Committee has held that:

The obligation in article 7 to provide “the necessary information to the public” includes requirements both:

(a) To actively disseminate the information indicated in article 6 (2), including information about the opportunities to participate and availability of the relevant information; and

(b) To make available to the public all information that is in the possession of the competent authorities and is relevant to the decision-making and is to be used for that purpose. The relevant information under category (b) would normally include the following information:

(i) The main reports and advice issued to the competent authority;

(ii) Any information regarding possible environmental consequences and cost-benefit and other economic analyses and assumptions to be used in the decision-making;

(iii) An outline of the main alternatives studied by the competent authority.<sup>24</sup>

129. With respect to paragraph 2 (g) (i), the Party concerned in its first progress report refers to various provisions of its legal framework on access to environmental information, including article 5 of the Constitution, article 10 of the Law “On Access to Information”, article 18 of the Environmental Code and paragraph 13 of the Rules for Public Hearings.<sup>25</sup> It also cites various provisions of its legal framework concerning public participation in decision-making, including article 5 of the Environmental Code, article 18 (4) of the Law “On Legal Acts” and paragraph 10 of the Rules for the development and approval of draft bylaws of regulatory legal acts.<sup>26</sup> The Party concerned does not, however, explain how any

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<sup>24</sup> Findings on communication ACCC/C/2014/100 (United Kingdom), ECE/MP.PP/C.1/2019/6, para. 94.

<sup>25</sup> Party concerned’s first progress report, 29 September 2023, pp. 10-11.

<sup>26</sup> Party concerned’s first progress report, 29 September 2023, pp. 10-11.

of these provisions impose a clear requirement to ensure that, during the preparation of plans and programmes within the scope of article 7, the necessary information is provided to the public.

130. Having reviewed the provisions cited by the Party concerned, the Committee considers that none of these provisions impose a clear requirement to ensure that the “necessary information” is provided to the public during the preparation of plans and programmes within the scope of article 7, as required by paragraph 2 (g) (i) of decision VII/8k.

131. The Committee considers the information before it regarding plans and programmes relating to the environment that are subject to SEA, as well as those not subject to SEA, below.

#### Plans and programmes relating to the environment subject to SEA

132. With respect to a clear requirement to ensure that the necessary information is provided to the public during the preparation of plans and programmes subject to SEA, the Committee recalls its report on decision VI/8g to the seventh session of the Meeting of the Parties in which it held:

105. The Committee welcomes article 60 (6) of the new Environmental Code which sets out a broad list of information that must be provided to the public, including in particular article 60 (6) (16) which requires to provide the public with all other information relevant to the strategic environmental assessment. However, since the Party concerned has not yet adopted its relevant secondary legislation, the Committee is not yet in a position to determine that the Party concerned has fully met the requirements of paragraph 5 (c) (i) of decision VI/8g.

106. Accordingly, the Committee, while welcoming the progress made, finds that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 5 (c) (i) of decision VI/8g.<sup>27</sup>

133. Regarding the relevant secondary legislation, the Committee notes that article 60 (6) of the Environmental Code expressly refers to the instructions for organizing and conducting an environmental assessment (“instructions on environmental assessment”).

134. In the light of paragraphs 105-106 of its report on decision VI/8g to the Meeting of the Parties, the Committee expresses its disappointment that the Party concerned has not provided an update in its first progress report on whether its instructions on environmental assessment are yet adopted nor, if so, any provisions of those instructions that would be relevant to ensuring that the necessary information is provided to the public during the preparation of plans and programmes subject to SEA.

135. The Committee invites the Party concerned to provide an update in its final progress report on the status of its instructions on environmental assessment and, if they are by then adopted, to provide the text of any provisions of those instructions that would be relevant to ensuring that the necessary information is provided to the public during the preparation of plans and programmes subject to SEA.

#### Plans and programmes relating to the environment not subject to SEA

136. In its first progress report, the Party concerned has not put before the Committee any provision of its legal framework that will ensure that, during the preparation of plans and programmes relating to the environment that are not subject to SEA, the necessary information is provided to the public.

137. If the Party concerned’s legal framework does indeed include such a requirement, the Committee invites the Party concerned, in its final progress report, to provide the text of the relevant provisions clearly establishing that requirement.

138. Alternatively, if the Party concerned’s legal framework does not presently contain a requirement that, during the preparation of plans and programmes relating to the environment

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<sup>27</sup> ECE/MP.PP/2021/53, paras. 105 and 106.

that are not subject to SEA, the necessary information is provided to the public, the Committee urges the Party concerned to take the necessary measures to establish such a requirement and to thereafter provide, together with its final progress report, the text of those measures including an English translation thereof.

Concluding remarks regarding paragraph 2 (g) (i)

139. In light of the considerations in paragraphs 127-138 above, the Committee concludes that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 2 (g) (i) of decision VII/8k either with respect to plans and programmes subject to SEA or those that are not.

**Paragraph 2 (g) (ii) – Identification of the public which may participate during the preparation of plans and programmes within the scope of article 7**

140. In order to fulfil paragraph 2 (g) (ii) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Ensure that appropriate practical and/or other provisions are made for the public to participate during the preparation of plans within the scope of article 7 of the Convention, including clear requirements to ensure that:

...

(ii) The public that may participate is identified by the relevant public authority.

141. In line with paragraph 60 above, the Party concerned will need to ensure that the recommendation in paragraph 2 (g) (ii) is fulfilled with respect to all plans and programmes relating to the environment in the Party concerned, including those that are subject to SEA and those that are not.

142. Regarding paragraph 2 (g) (ii), in its first progress report the Party concerned mentions articles 15 (1) – (5) and 73 (9) of the Environmental Code and paragraph 7 of the Rules for Public Hearings.<sup>28</sup>

143. Having reviewed the provisions cited by the Party concerned, the Committee considers that none of those provisions address the recommendation in paragraph 2 (g) (ii), namely to establish a clear requirement that will ensure that, during the preparation of plans and programmes relating to the environment, the public which may participate is identified by the relevant public authority.

144. The Committee considers the information before it regarding plans and programmes relating to the environment that are subject to SEA, as well as those not subject to SEA, below.

Plans and programmes subject to SEA

145. With respect to plans and programmes subject to SEA, the Committee notes that, while not cited by the Party concerned itself, article 60 (3) and (4) of the Environmental Code appear to be of relevance for fulfilling the recommendation in paragraph 2 (g) (ii). Article 60 (3) stipulates that: “the state body-developer ensures the participation of the public concerned in the strategic environmental assessment by: 1) determining the public concerned”. Article 60 (4) provides that “[t]he criteria for determining the public concerned are determined by the instructions for organizing and conducting of an environmental assessment.”<sup>29</sup>

146. In its report on VI/8g to the seventh session of the Meeting of the Parties, the Committee had already highlighted the apparent relevance of article 60 (3) and (4), but concluded that since the instructions on environmental assessment had not yet been adopted, it was not in a position to determine whether the Party concerned had in fact met the requirements of the recommendation.<sup>30</sup> The Committee accordingly expresses its

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<sup>28</sup> Party concerned’s first progress report, 29 September 2023, p. 12.

<sup>29</sup> Party concerned’s first progress report, 29 September 2023, annex 2, p. 49.

<sup>30</sup> ECE/MP.PP/2021/53, para. 109.

disappointment that the Party concerned has not provided an update in its first progress report on whether the instructions on environmental assessment are yet adopted nor, if so, the provisions of those instructions establishing the criteria for determining the “public which may participate” as required by article 7 of the Convention.

147. The Committee invites the Party concerned to provide an update in its final progress report on the status of its instructions on environmental assessment and, if they are by then adopted, the text of its provisions establishing the criteria for determining the “public which may participate” as required by article 7.

#### Plans and programmes relating to the environment not subject to SEA

148. In its first progress report, the Party concerned has not put before the Committee any provision of its legal framework that requires the relevant public authority to identify the public that may participate during the preparation of plans and programmes relating to the environment not subject to SEA.

149. If the Party concerned’s legal framework does indeed include such a requirement, the Committee invites the Party concerned, in its final progress report, to provide the text of the relevant provisions clearly establishing that requirement.

150. Alternatively, if the Party concerned’s legal framework does not presently contain a requirement that, during the preparation of plans and programmes relating to the environment that are not subject to SEA, the public that may participate is identified by the relevant public authority, the Committee urges the Party concerned to take the necessary measures to establish such a requirement and to thereafter provide, together with its final progress report, the text of those measures including an English translation thereof.

#### Concluding remarks regarding paragraph 2 (g) (ii)

151. In the light of the considerations in paragraphs 141-150 above, the Committee concludes that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 2 (g) (ii) of decision VII/8k either with respect to plans and programmes subject to SEA or those that are not.

#### **Paragraph 2 (g) (iii) – Application of articles 6 (3), (4) and (8) to plans and programmes within the scope of article 7**

152. In order to fulfil paragraph 2 (g) (iii) of decision VII/8k, the Party concerned will need to take, as a matter of urgency, the necessary legislative, regulatory, and administrative measures and practical arrangements to:

Ensure that appropriate practical and/or other provisions are made for the public to participate during the preparation of plans within the scope of article 7 of the Convention, including clear requirements to ensure that:

...

(iii) The requirements of article 6 (3), (4) and (8) of the Convention are applied.

153. In line with paragraph 60 above, the Party concerned will need to ensure that the recommendation in paragraph 2 (g) (iii) is fulfilled with respect to all plans and programmes relating to the environment in the Party concerned, including those that are subject to SEA and those that are not.

154. With respect to paragraph 2 (g) (iii), the Party concerned refers in its first progress report to paragraphs 13, 15, 17 and 45 of the Rules for Public Hearings. The Party concerned does not however indicate which of article 6 (3), (4) or (8) of the Convention, paragraphs 13, 15, 17 and 45 of the Rules are intended to implement.

155. The Committee notes that paragraphs 13, 15, 17 and 45 set various timeframes within which the public may participate with respect to certain specified activities. These paragraphs would therefore appear to be potentially of relevance for the implementation of article 6 (3) of the Convention. The Committee therefore examines paragraphs 13, 15, 17 and 45 of the Rules in the context of its considerations on article 6 (3) in paragraphs 157-161 below.



156. The Party concerned in its first progress report does not report on any measures it has taken to implement paragraph 2 (g) (iii) with respect to the requirements of article 6 (4) and (8) of the Convention.

*Article 6 (3) of the Convention – Reasonable time frames for different phases, allowing sufficient time for informing the public and for the public to participate effectively*

157. The Committee has examined the time frames for public participation in decision-making on plans and programmes subject to article 7 in paragraphs 39-62 above. The Committee considers that the considerations in those paragraphs apply equally to the Party concerned's progress to implement paragraph 2 (g) (iii) with respect to ensuring that the requirements of article 6 (3) of the Convention are applied during the preparation of plans and programmes within the scope of article 7 of the Convention.

158. Accordingly, subject to receiving any information to the contrary in the meantime, the Committee will report to the Meeting of the Parties that the Party concerned has met the requirements of paragraph 2 (g) (iii) of decision VII/8k with respect to ensuring that the requirements of article 6 (3) of the Convention are applied during the preparation of:

- (a) Plans and programmes subject to SEA (see paras. 39-47 above);
- (b) Three-year action plans for environmental protection within the scope of paragraph 6 (3) of the Rules for Public Hearings (see paras. 48-52 above);
- (c) Environmental efficiency programmes within the scope of paragraph 39 (3) of the Rules for Public Hearings (see paras. 53-56 above).

159. However, recalling its findings on communication ACCC/C/2013/88 (Kazakhstan) (see para. 58 above), the Committee is not convinced that the plans and programmes referred to in paragraph 158 above represent the full scope of plans and programmes "relating to the environment" prepared by public authorities in the Party concerned, and therefore within the scope of article 7 of the Convention.

160. The Committee underlines that, to fully meet the recommendation in paragraph 2 (g) (iii) of decision VII/8k with respect to article 6 (3) of the Convention, the Party concerned will need to demonstrate in its final progress report that it ensures that the requirements of article 6 (3) of the Convention are applied during the preparation of all plans and programmes "relating to the environment" prepared by public authorities in the Party concerned.

Concluding remarks regarding article 6 (3)

161. Accordingly, the Committee concludes that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 2 (g) (iii) of decision VII/8k with respect to article 6 (3) of the Convention with respect to all plans and programmes "relating to the environment" within the scope of article 7 of the Convention, and specifically those that are not either subject to SEA or covered by paragraphs 6 (3) or 39 (3) of the Rules for Public Hearings.

*Article 6 (4) of the Convention – Early public participation when all options are open*

162. The Committee expresses its disappointment that, in its first progress report, the Party concerned does not report on its implementation of paragraph 2 (g) (iii) with respect to ensuring that the requirements of article 6 (4) of the Convention are applied during the preparation of plans and programmes within the scope of article 7 of the Convention.

Plans and programmes relating to the environment subject to SEA

163. Concerning the requirement that the Party concerned ensure that article 6 (4) of the Convention is applied during the preparation of plans and programmes subject to SEA, the Committee recalls its report on decision VI/8g to the seventh session of the Meeting of the Parties in which it held:

- 116. The Committee notes that article 5 (9) of the new Environmental Code sets out "the principle of public participation", including that the public has the right to participate in decision-making on issues affecting the environment at an early stage,



when all options are open for consideration and when effective public participation can be ensured.

117. Moreover, article 60 (2) of the new Environmental Code provides that the “public authority-developer” shall ensure that the public concerned is able to participate in all stages of the strategic environmental assessment, beginning with the initial stage in the development of the documents where options can be selected from among the available alternatives.

118. While welcoming both the abovementioned provisions, the Committee notes that from the wording of article 60 (2) of the new Environmental Code, it is not clear that the public has the right to participate when all options, including the zero option, are open. Based on article 60 (2), it appears that the public has the right to participate only with respect to “options which are available” rather than “when all options are open” as required by the Convention. The Committee points out that, if that were the case, that would not meet the requirements of article 6 (4) of the Convention.

119. Since the relevant secondary legislation has not yet been adopted, the Committee invites the Party concerned to take into account paragraph 118 above when doing so.<sup>31</sup>

164. The Committee reaffirms the above paragraphs of its report on decision VI/8g to the Meeting of the Parties. Article 60 (2) of the Environmental Code provides:

The state body-developer is obliged to ensure the possibility of participation of the public concerned at all stages of the strategic environmental assessment in accordance with the requirements of this Code and the instructions for organizing and conducting of an environmental assessment, starting from the initial stage of developing the Documents, where a choice of solutions from among the available alternatives is possible.<sup>32</sup>

165. As the Committee made clear in paragraph 118 of its report on decision VI/8g to the Meeting of the Parties (see para. 163 above), article 6 (4) of the Convention requires that the public has an opportunity to participate when all options, including the zero option, are open.

166. By “zero option”, the Committee means the possibility not to adopt or otherwise proceed with the particular plan as proposed.

167. While welcoming article 60 (2) of the Environmental Code, the Committee considers that the provision does not make it clear that the public has the right to participate when all options, including the zero option, are open. In particular, article 60 (2) does not clearly require that, at all stages of the SEA procedure, the zero option must be one of the available alternatives. The Party concerned has not pointed the Committee to any other provision of its legal framework, whether in the Environmental Code, the Instructions on Environmental Assessment or elsewhere, that clearly requires that, at all stages of the SEA procedure, the zero option must be one of the available alternatives.

168. In the light of paragraphs 116-119 of its report on decision VI/8g to the Meeting of the Parties (see para. 163 above), the Committee expresses its disappointment that the Party concerned has not provided an update in its first progress report on whether the instructions on environmental assessment are yet adopted nor, if so, the relevant provisions of those instructions imposing a requirement to ensure that article 6 (4) of the Convention is applied during the preparation of plans and programmes subject to SEA.

169. The Committee invites the Party concerned, in its final progress report, to provide an update on the status of its instructions on environmental assessment and, if they are by then adopted, the relevant provisions of the instructions imposing a requirement to ensure that article 6 (4) of the Convention is applied during the preparation of plans and programmes subject to SEA.

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<sup>31</sup> ECE/MP.PP/2021/53, paras. 116-119.

<sup>32</sup> Party concerned’s first progress report, 29 September 2023, annex 2, p. 49.

#### Plans and programmes relating to the environment not subject to SEA

170. The Party concerned in its first progress report has not informed the Committee of any provision of its legal framework that ensures that the requirements of article 6 (4) are applied during the preparation of plans and programmes relating to the environment not subject to SEA.

171. If the Party concerned's legal framework does indeed include such a requirement, the Committee invites the Party concerned, in its final progress report, to provide the text of the relevant provisions clearly establishing that requirement.

172. Alternatively, if the Party concerned's legal framework does not presently contain a requirement that will ensure that the requirements of article 6 (4) of the Convention are applied during the preparation of plans and programmes relating to the environment that are not subject to SEA, the Committee urges the Party concerned to take the necessary measures to establish such a requirement and to thereafter provide, together with its final progress report, the text of those measures including an English translation thereof.

#### Concluding remarks regarding article 6 (4)

173. Based on the considerations in paragraphs 162-172 above, the Committee concludes that the Party concerned has not yet demonstrated that it has taken the necessary measures to ensure that the requirements of article 6 (4) of the Convention are applied during the preparation of plans and programmes within the scope of article 7 of the Convention.

#### *Article 6 (8) of the Convention – Requirement to take due account of the outcome of public participation*

174. The Committee expresses its disappointment that, in its first progress report, the Party concerned does not report on its implementation of paragraph 2 (g) (iii) with respect to ensuring that the requirements of article 6 (8) of the Convention are applied during the preparation of plans and programmes within the scope of article 7 of the Convention.

#### Plans and programmes subject to SEA

175. While not mentioned by the Party concerned in its first progress report, the Committee welcomes that article 60 (3) (6) of the Environmental Code requires that “the state body-developer is obliged to ensure the participation of the public concerned in the strategic environmental assessment by... (6) taking into account its comments and suggestions in the process of conducting a strategic environmental assessment”.<sup>33</sup>

176. However, as highlighted in paragraph 92 above, paragraph 25 of the Rules for Public Hearings stipulates that:

When holding public hearings, comments and suggestions from interested government bodies and the public that are not specifically formulated and do not reflect the essence of the comments and suggestions or are clearly not related to the subject of the public hearing are not taken into account, based on the results of voting by a simple majority of all participants in the hearing.<sup>34</sup>

177. As the Committee made clear in paragraph 94 above, article 6 (8) of the Convention requires that every comment, even if brief or general or that does no more than express support for, or opposition to, an activity must still be taken into account.

178. The Committee therefore urges the Party concerned to amend paragraph 25 of the Rules for Public Hearings to ensure that every comment, even if brief or general or that does no more than express support for, or opposition to, an activity, must still be taken into account. The Committee invites the Party concerned, together with its final progress report, to provide the amended text of paragraph 25 of the Rules for Public Hearings, together with an English translation thereof.

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<sup>33</sup> Party concerned's first progress report, 29 September 2023, annex 2, p. 49.

<sup>34</sup> Party concerned's first progress report, 29 September 2023, annex 1, p. 7.

#### Plans and programmes relating to the environment not subject to SEA

179. The Party concerned in its first progress report has not informed the Committee of any provision of its legal framework that will ensure that the requirements of article 6 (8) are applied during the preparation of plans and programmes relating to the environment that are not subject to SEA.

180. If the Party concerned's legal framework does indeed include such a requirement, the Committee invites the Party concerned, in its final progress report, to provide the text of the relevant provisions clearly establishing that requirement.

181. Alternatively, if the Party concerned's legal framework does not presently contain a requirement that due account must be taken of the outcome of public participation during the preparation of plans and programmes relating to the environment that are not subject to SEA, the Committee urges the Party concerned to take the necessary measures to establish such a requirement and to thereafter provide, together with its final progress report, the text of those measures including an English translation thereof.

#### Concluding remarks regarding article 6 (8)

182. Based on the considerations in paragraphs 174-181 above, the Committee concludes that the Party concerned has not yet demonstrated that it has taken the necessary measures to ensure that the requirements of article 6 (8) of the Convention are applied during the preparation of plans and programmes within the scope of article 7 of the Convention.

## **IV. Conclusions**

183. The Committee welcomes the Party concerned's first progress report which was received on time. The Committee particularly welcomes the format of the first progress report, in the form of a table, which is very clear and easy to follow.

184. The Committee however expresses its serious concern that it appears that many of the issues highlighted by the Committee in its report on decision VI/8g to the seventh session of the Meeting of the Parties have not yet been addressed by the Party concerned.

185. The Committee also expresses its disappointment that, for a number of the recommendations in decision VII/8k, the Party concerned in its first progress report has omitted to mention the provisions of its legal framework which are directly relevant to the recommendation at issue, or it has referred to legislative provisions which are not relevant to fulfil the particular recommendation.

186. This has resulted in a situation wherein the Committee has had to itself search the Environmental Code and the Rules for Public Hearings to identify the relevant provisions in order to be able to assess whether the Party concerned has in fact taken measures to address each recommendation in decision VII/8k. This has seriously hampered and significantly delayed the Committee in its task to review the progress by the Party concerned to implement decision VII/8k.

187. The Committee urges the Party concerned in its final progress report to ensure that, when reporting on its implementation of each of the recommendations in paragraph 2 (a) – (g) of decision VII/8k, it takes full account of the Committee's considerations on each recommendation detailed in the present progress review.

188. The Committee also invites the Party concerned to provide together with its final progress report, the texts, together with English translations thereof, of all legislative, regulatory or administrative measures that it has by then taken to implement the recommendations in paragraphs 2 (a)-(g) of decision VII/8k.

189. The Committee reminds the Party concerned that all measures necessary to implement decision VII/8k must be completed by, and reported upon, by no later than 1 October 2024, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VII/8k.